



OFFICE OF
INSURANCE COMMISSIONER

TECHNICAL ASSISTANCE ADVISORY

T 04-05

TO: All Washington Licensed Brokers and Insurance Companies

SUBJECT: Broker Compensation – Washington Duties and Requirements

DATE: October 21, 2004

Recent publicity about investigations in other states of alleged kickbacks, undisclosed compensation, and other improper incentives in the insurance industry merits this reminder to Washington licensed brokers and insurance companies about specific statutory requirements and ethical behavior expectations in Washington.

Washington law makes it clear that licensed “brokers” represent and act on behalf of insureds. RCW 48.17.020 Other statutes and regulations provide guidance as to some of the specific duties owed by brokers to their insureds. For example, it has been an unfair practice since 1987:

....for any broker providing services in connection with the procurement of insurance to charge a fee in excess of the usual commission which would be paid to an agent without having advised the insured or prospective insured, in writing, in advance of the rendering of services, that there will be a charge and its amount or the basis on which such charge will be determined. WAC 284-30-750

RCW 48.17.260(2) confirms that a broker has the right to receive a “customary commission” from an insurer or agent on insurance placed by the broker. RCW 48.17.270(2) also provides that, with respect to property and casualty insurance, a person holding a broker and an agent license may receive both commissions from an insurer and fees from the insured. However, a broker/agent placing property or casualty coverage who receives a fee from the insured, deals directly with that insured, and also receives a commission from the insurer, must disclose to the insured in writing **the full amount of the compensation**, including explanation of any offset or reimbursement. That document must be signed by the insured and the agent/broker and must be retained by the agent/broker for five years. You may expect our examiners to request to review these disclosures and related documentation during licensee examinations.

A broker has a duty to recommend the product that best suits their customer’s needs.

We offer the following guidance for compliance with Washington law.

Brokers must:

- Reduce all compensation arrangements between them and an insurance company to writing.

- Disclose all compensation arrangements to the insured before a product decision in a sufficiently complete and understandable form so the insured is able to understand and consider possible incentives to their broker in placing the business and the costs of the coverage.

Insurers must:

- When establishing premium rates, consider all commissions and other compensation the insurer pays to agents and brokers
- Include and maintain a record of all compensation arrangements they have with brokers and an explanation of the basis for such compensation;
- Routinely audit their records to confirm that all fees paid to brokers are proper and in accordance with Washington law and regulations. Insurance companies identifying problems within their records are encouraged to self-report their findings to the Office of the Insurance Commissioner rather than wait for a market conduct examination.

We also call to your attention the provisions of Washington's "Anticompact" law, RCW 48.30.020, which prohibits, among other actions,

...establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

Finally, we remind all reading this advisory of the fundamental public interest involved in the business of insurance. Among the more than one thousand sections of the Washington Insurance Code, RCW 48.01.030 perhaps best captures the fundamental principles that guide all involved with insurance.

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers and their representatives rests the duty of preserving inviolate the integrity of insurance.

Mike Kreidler
Insurance Commissioner